IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928

WP(C).No. 2693 of 2007(U)

CC.186/1995 of J.M.F.C.-II, KOCHI

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PETITIONER:

T.G.JOBE, AGED 51 YEARS, S/O.GEORGE,
THOTTUKADAVIL HOUSE, EDAKOCHI, COCHIN-6.

BY ADV. SRI.MOHAN JACOB GEORGE
SMT.P.V.PARVATHI
SMT.REENA THOMAS

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. DIRECTOR GENERAL OF PRISONS,
KERALA STATE.

BY GOVERNMENT PLEADER SMT.LATHA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R.BASANT, J

W.P(C).No.2693 of 2007

Dated this the 24th day of January, 2007

JUDGMENT

The petitioner is an accused in a prosecution under Section 138 of the N.I Act. He was found guilty, convicted and sentenced by the learned Magistrate. The appellate and revisional Courts have also upheld the verdict of guilty and conviction. The court of revision noted that a sentence of fine of Rs.40,000/- was imposed by the court below and the said sentence does not comply with the mandate of Section 29 Cr.P.C. The learned Judge in revision, set aside the sentence and sent the matter back to the learned Magistrate for fresh disposal.

2. The petitioner has come to this Court with the submission that even before this Court disposed of the revision, the petitioner was compelled to suffer imprisonment for 3 months as the default sentence. That fact was omitted to be brought to the notice of the Judge who disposed of the revision petition. It is now a traversity of justice that the petitioner must be compelled to go before the learned Magistrate again. In these circumstances, it is prayed that the order passed in revision may be set aside and the petitioner may not be compelled to face the trauma of any continued further proceedings. The petitioner had undergone imprisonment as early as in 1997/1998, it is submitted.

3. The plight of the petitioner deserves sympathy. But legally, the order passed in revision by another Bench of this Court cannot be modified or altered by invoking the powers under Section 482 Cr.P.C. The Court was satisfied that the sentence imposed was legally incorrect. It is only for that reason that the matter was sent back to the Magistrate.

4. The learned counsel for the petitioner submits that the petitioner will be put to unnecessary trauma. He has already suffered imprisonment for 3 months. I am of the opinion that the petitioner must appear before the learned Magistrate in compliance with the order passed by this Court in revision. He must seek further direction from the learned Magistrate. I find no reason to lightly assume that the learned Magistrate would sentence him to any period of imprisonment either substantive sentence or default sentence which would be in excess of the sentence of imprisonment for 3 months which he has already undergone. In the facts and circumstances of this case, the learned Magistrate must certainly ensure that appropriate sentence is imposed and the trauma of further proceedings is avoided on the date when the petitioner appears before the learned Magistrate.

5. In the result, this Writ Petition is, dismissed. But with the specific observation that if the petitioner enters appearance before

the learned Magistrate on the next date of posting, the learned Magistrate must proceed to pass appropriate final orders taking into account the realities of the situation which are revealed from the submissions made.

6. Hand over a copy of this judgment to the learned counsel for the petitioner today itself.

(R.BASANT, JUDGE)

rtr/-